

09:02AM

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 SAN JOSE DIVISION

5
6 IN RE TELESCOPES ANTITRUST
LITIGATION

CASE NO. CV-20-03639 EJD

7 SAN JOSE, CALIFORNIA

8 THIS DOCUMENT RELATES TO:
ALL INDIRECT PURCHASER ACTIONS

OCTOBER 31, 2024

9 PAGES 1 - 27

10
11 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
12 UNITED STATES DISTRICT JUDGE

13 A-P-P-E-A-R-A-N-C-E-S

14 FOR THE PLAINTIFFS: COTCHETT PITRE & MCCARTHY LLP
BY: ADAM J. ZAPALA
15 840 MALCOLM ROAD, SUITE 200
BURLINGAME, CALIFORNIA 94010

16 FOR THE DEFENDANT FROST LLP
17 TELEPHONICALLY: BY: CHRISTOPHER L. FROST
18 10960 WILSHIRE BOULEVARD, SUITE 2100
LOS ANGELES, CALIFORNIA 90024

19 FROST LLP
20 BY: JOSHUA STAMBAUGH
10960 WILSHIRE BOULEVARD, SUITE 2100
21 LOS ANGELES, CALIFORNIA 90024

22 (APPEARANCES CONTINUED ON THE NEXT PAGE.)

23 OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, RMR, CRR
24 CERTIFICATE NUMBER 8074

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

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A P P E A R A N C E S: (CONT'D)

ALSO PRESENT:

BRAUNHAGEY & BORDEN LLP
BY: MATTHEW B. BORDEN
747 FRONT STREET, 4TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

SAN JOSE, CALIFORNIA

OCTOBER 31, 2024

P R O C E E D I N G S

(COURT CONVENED AT 9:19 A.M.)

THE COURT: THANK YOU. PLEASE BE SEATED. LET'S
CALL OUR MORNING MATTER, OUR 9:00 O'CLOCK MATTER. IT'S NOW,
THE RECORD SHOULD REFLECT, IT'S 9:20 PACIFIC STANDARD TIME.

LET'S CALL 20-3639, HIGHTOWER VERSUS CELESTRON.

MAY I HAVE THE APPEARANCE OF THE PARTIES, PLEASE.

MR. ZAPALA: THANK YOU, YOUR HONOR.

MAY I APPROACH?

THE COURT: YES.

MR. ZAPALA: GOOD MORNING, YOUR HONOR.

ADAM ZAPALA FROM COTCHETT PITRE & MCCARTHY FOR THE
INDIRECT PURCHASER PLAINTIFFS.

THE COURT: THANK YOU. GOOD MORNING.

MR. ZAPALA: GOOD MORNING.

THE COURT: AND I SEE THE DEFENDANT'S CHAIR EMPTY.
IS ANYONE HERE FOR DEFENDANT?

MR. FROST: THANK YOU, YOUR HONOR. GOOD MORNING.

THIS IS CHRISTOPHER FROST OF FROST LLP ON BEHALF OF THE
DEFENDANTS. MY SINCERE APOLOGIES THAT WE HAVE TO APPEAR BY
TELEPHONE TODAY.

THE COURT: THANK YOU, MR. FROST. THANK YOU FOR
JOINING.

09:20AM 1 I THINK YOUR ASSOCIATE, JOSHUA STAMBAUGH, WAS ASSIGNED TO
09:20AM 2 APPEAR. WE RECEIVED A MESSAGE JUST BEFORE 9:00 O'CLOCK,
09:20AM 3 SOMETHING ABOUT A FLIGHT DELAY, AND THEN IN A SUBSEQUENT
09:20AM 4 REQUEST, THAT IN MR. STAMBAUGH'S OPINION THE MATTER MIGHT BE
09:20AM 5 RESOLVED BY US PASSING THE MATTER AND CALLING IT LAST ON OUR
09:20AM 6 CALENDAR.

09:20AM 7 I REALLY APPRECIATE HIS DESIRE TO HELP ME MANAGE MY
09:20AM 8 CALENDAR, BUT I WOULD PREFER TO CALL THE MATTER NOW IF THAT'S
09:21AM 9 ALL RIGHT WITH YOU, SIR, AND MR. STAMBAUGH?

09:21AM 10 MR. FROST: YES, OF COURSE. WE APPRECIATE YOUR
09:21AM 11 INDULGENCE. MY APOLOGIES AGAIN.

09:21AM 12 THE COURT: WELL, THANK YOU. LET'S GET TO THE
09:21AM 13 BUSINESS AT HAND. THIS IS A MOTION FOR PRELIMINARY APPROVAL OF
09:21AM 14 SETTLEMENT, AND I DID RECEIVE THE DOCUMENTS REGARDING
09:21AM 15 SETTLEMENT.

09:21AM 16 LET ME, LET ME TURN THEN TO MR. ZAPALA. WHY SHOULD THE
09:21AM 17 COURT GRANT PRELIMINARY APPROVAL HERE?

09:21AM 18 MR. ZAPALA: THANK YOU, YOUR HONOR.

09:21AM 19 ADAM ZAPALA AGAIN FOR THE INDIRECT PURCHASER PLAINTIFFS.

09:21AM 20 WE'RE PLEASED TO PRESENT THIS SETTLEMENT. WE THINK IT'S
09:21AM 21 AN EXCELLENT RESULT FOR THE INDIRECT PURCHASER CLASS.

09:21AM 22 THIS SETTLEMENT INCLUDES \$32 MILLION IN REMUNERATION FOR
09:21AM 23 CLASS MEMBERS, WHICH WE BELIEVE IS AN EXCELLENT RECOVERY BOTH
09:21AM 24 IN LIGHT OF THE FACTS AND CIRCUMSTANCES OF THIS CASE BUT ALSO
09:21AM 25 OBVIOUSLY THE EXPERIENCE OF EXPERIENCED CLASS COUNSEL IN

09:21AM 1 ANTITRUST CASES.

09:22AM 2 THE FIRST THING I WILL TALK ABOUT IS SORT OF THE
09:22AM 3 PROCEDURAL FAIRNESS OF THE SETTLEMENT AND THE FACTORS THAT
09:22AM 4 COURTS IN THE NINTH CIRCUIT LOOK AT AT PRELIMINARY APPROVAL AND
09:22AM 5 WHAT IS NOW UNDER RULE 23 A MOTION TO DIRECT NOTICE TO THE
09:22AM 6 CLASS.

09:22AM 7 FIRST, THIS WAS NOT A FILE AND SETTLE KIND OF CASE AS IS
09:22AM 8 OBVIOUS FROM THE MANY ENTRIES IN YOUR DOCKET. THERE'S BEEN
09:22AM 9 EXTENSIVE LITIGATION IN YOUR CASE, EXTENSIVE DISCOVERY, MOTIONS
09:22AM 10 PRACTICE, MOTIONS TO COMPEL. AND WHAT THAT MEANS IS THAT THE
09:22AM 11 PARTIES WERE FULLY INFORMED ABOUT THE STRENGTHS AND WEAKNESSES
09:22AM 12 OF THE CASE WHEN THEY NEGOTIATED THE SETTLEMENT. SO THAT'S ONE
09:22AM 13 ISSUE TO LOOK AT IN TERMS OF PROCEDURAL FAIRNESS, THE AMOUNT OF
09:22AM 14 LITIGATION THAT OCCURRED. AND OBVIOUSLY, I THINK WE PUT IT IN
09:22AM 15 OUR PAPERS, BUT THE INDIRECT PURCHASER PLAINTIFFS EXPENDED IN
09:22AM 16 LODESTAR ABOUT \$11 MILLION. SO IN TERMS OF TIME WORKED ON THE
09:22AM 17 CASE, IT'S BEEN EXTENSIVE. YOUR HONOR HAS RULED ON A NUMBER OF
09:22AM 18 PLEADING CHALLENGES.

09:22AM 19 IN ADDITION, THE SETTLEMENT PROCESS WAS OVERSEEN BY A
09:23AM 20 NATIONALLY RENOWNED MEDIATOR, A FORMER MAGISTRATE JUDGE OF THE
09:23AM 21 CENTRAL DISTRICT, JUDGE SEGAL, AND THERE WERE PROTRACTED
09:23AM 22 NEGOTIATIONS.

09:23AM 23 THIS WAS, AGAIN, NOT A FILE AND SETTLE SORT OF CASE.
09:23AM 24 THERE WAS AN INITIAL MEDIATION TWO YEARS AGO THAT WAS
09:23AM 25 UNSUCCESSFUL, ANOTHER MEDIATION OCCURRING A YEAR AFTER THAT

09:23AM 1 THAT RESULTED IN A MEDIATOR'S PROPOSAL THAT BOTH SIDES
09:23AM 2 EXPECTED. SO THE ENTIRE MEDIATION PROCESS HAS BEEN OVERSEEN BY
09:23AM 3 A FORMER FEDERAL JUDGE.

09:23AM 4 AND THEN IN ADDITION TO THAT, IN TERMS OF THE TERMS OF THE
09:23AM 5 SETTLEMENT, THERE'S NO SIGNS OF COLLUSION, THERE'S NO CLEAR
09:23AM 6 SAILING PROVISIONS OR ANYTHING LIKE THAT. THERE'S NO REVERSION
09:23AM 7 TO THE DEFENDANT. SO A \$32 MILLION DEAL, NONE OF THAT REVERTS
09:23AM 8 TO THE DEFENDANT.

09:23AM 9 SO IN TERMS OF PROCEDURAL FAIRNESS, WE BELIEVE ALL OF THE
09:23AM 10 SIGNS POINT TOWARDS APPROVAL. THE NEGOTIATIONS WERE ARM'S
09:23AM 11 LENGTH. AGAIN, THERE WERE 3.9 MILLION DOCUMENTS PRODUCED IN
09:23AM 12 THIS CASE, AND MANY OF THOSE HAVE BEEN REVIEWED AT THE TIME OF
09:23AM 13 SETTLEMENT.

09:23AM 14 IN TERMS OF SUBSTANTIVE FAIRNESS, OF COURSE, AGAIN,
09:24AM 15 32 MILLION IS REAL MONEY. THIS IS AN INDIRECT PURCHASER CASE.
09:24AM 16 THEY'RE NOTORIOUSLY DIFFICULT AND COMPLEX AND OFTEN RESULTS IN
09:24AM 17 ZERO RECOVERY FOR THE CLASS, EITHER BECAUSE OF CLASS
09:24AM 18 CERTIFICATION DENIAL OR OTHER COMPLEXITIES THAT ARISE IN THE
09:24AM 19 CONTEXT OF COMPLEX LITIGATION.

09:24AM 20 IT'S BEEN CASE LAW FOR -- SORT OF BEDROCK CASE LAW IN THE
09:24AM 21 NINTH CIRCUIT THAT SETTLEMENTS ARE FAVORED IN ANTITRUST CLASS
09:24AM 22 ACTIONS, AND THAT'S WHAT THIS IS.

09:24AM 23 THE VOLUME OF COMMERCE IN THIS CASE HAS BEEN CALCULATED BY
09:24AM 24 OUR EXPERTS AT A LITTLE OVER 600 MILLION. SO WHAT THAT MEANS
09:24AM 25 IS DURING THE CLASS PERIOD THERE WERE 600 MILLION IN SALES IN

09:24AM 1 TELESCOPES IN THE INDIRECT CASES. SO IF YOU LOOK AT THE
09:24AM 2 32 MILLION, YOU'RE TALKING ABOUT A 5 PERCENT OVERCHARGE, AND
09:24AM 3 THAT COMES OUT TO 32 MILLION, WHICH IS EXACTLY WHAT THE
09:24AM 4 RECOVERY IS.

09:24AM 5 SO, AGAIN, IN TERMS OF THE AMOUNT OF MONEY GOING TO THE
09:24AM 6 CLASS, WE THINK IT'S MORE THAN FAIR AND ADEQUATE. AND AGAIN,
09:24AM 7 IT'S SUPPORTED BY SOPHISTICATED COUNSEL. THESE ARE THE ONLY
09:24AM 8 KIND OF CASES THAT I DO. I KNOW THAT'S TRUE OF MY COLLEAGUES
09:25AM 9 AS WELL, MS. SRINIVASAN FROM SUSMAN GODFREY AND MS. CHAN FROM
09:25AM 10 LIEFF, CABRASER, HEIMANN & BERNSTEIN.

09:25AM 11 SO THESE FIRMS AND THE ATTORNEYS WORKING ON THE CASE ARE
09:25AM 12 REALLY EXPERIENCED ANTITRUST COUNSEL, AND, AGAIN, THEIR
09:25AM 13 RECOMMENDATION THAT THE COURT APPROVE IT CARRIES WEIGHT GIVEN
09:25AM 14 THAT KIND OF EXPERIENCE.

09:25AM 15 IN ADDITION TO SORT OF ALL OF THE SIGNS ABOUT THE FAIRNESS
09:25AM 16 OF THE SETTLEMENT, WE BELIEVE WE HAVE PROMULGATED OR SET FORTH
09:25AM 17 A MULTI LAYERED NOTICE PLAN TO REACH NOTICE TO THE CLASS. THAT
09:25AM 18 INCLUDES INDIVIDUAL NOTICE BOTH BY EMAIL AND U.S. MAIL, ALSO
09:25AM 19 EARNED AND UNEARNED MEDIA AND TARGETED ADVERTISING ON SOCIAL
09:25AM 20 MEDIA TO INFORM THOSE CLASS MEMBERS WHO MAYBE DIDN'T RECEIVE
09:25AM 21 INDIVIDUAL NOTICE ABOUT THEIR RIGHTS.

09:25AM 22 ALL OF THAT INFORMATION IN TERMS OF THE NOTICE PROGRAM CAN
09:25AM 23 BE FOUND IN THE DECLARATION OF CARLA PEAK, WHICH WAS SUBMITTED
09:25AM 24 ALONG WITH THE MATERIALS. AGAIN, WE SUBMIT THAT THAT NOTICE
09:25AM 25 PLAN IS BOTH CONSISTENT WITH RULE 23 AND DUE PROCESS.

09:26AM 1 AND THEN FINALLY, WE'VE SET FORTH A SORT OF SCHEDULE KEYED
09:26AM 2 OFF OF THE DATE THAT IN THE EVENT THAT THE COURT FINDS THE
09:26AM 3 SETTLEMENT WORTHY OF PRELIMINARY APPROVAL, WE'VE SET FORTH A
09:26AM 4 SCHEDULE FOR SORT OF NOTICE AND OBJECTIONS, EXCLUSIONS, AND
09:26AM 5 THEN ULTIMATELY THE FINAL APPROVAL HEARING.

09:26AM 6 I'M HAPPY TO ANSWER ANY QUESTIONS THAT THE COURT MAY HAVE
09:26AM 7 ABOUT THE SETTLEMENT.

09:26AM 8 THE COURT: THANK YOU. THANK YOU VERY MUCH.

09:26AM 9 INITIALLY, MR. FROST, ANY COMMENTS THAT YOU WOULD LIKE TO
09:26AM 10 MAKE INITIALLY BEFORE I ASK A FEW QUESTIONS?

09:26AM 11 MR. FROST: NONE, YOUR HONOR. THANK YOU. I THINK
09:26AM 12 MR. ZAPALA DID A FINE JOB OF EXPLAINING THE SORT OF UPS AND
09:26AM 13 DOWNS OF THE SETTLEMENT AND HOW WE GOT THERE.

09:26AM 14 THE COURT: OKAY. THANK YOU.

09:26AM 15 I'M JUST CURIOUS, MY FIRST QUESTION IS JUST ABOUT DO YOU
09:26AM 16 HAVE ANY EXPECTATION OF WHAT EACH CONSUMER MIGHT RECEIVE? AND
09:26AM 17 I KNOW IT'S DEPENDENT ON CLAIM NUMBERS AND THOSE THINGS.

09:26AM 18 MR. ZAPALA: YEAH.

09:26AM 19 THE COURT: I THINK YOUR PAPERS SUGGEST THAT YOU'RE
09:26AM 20 GOING TO BE ABLE TO REACH 80 PERCENT OF PURCHASERS, IS THAT --

09:27AM 21 MR. ZAPALA: WITH THE NOTICE PROGRAM, WITH THE
09:27AM 22 NOTICE PROGRAM.

09:27AM 23 THE COURT: RIGHT.

09:27AM 24 MR. ZAPALA: YEAH, THAT'S THE SUGGESTION IN TERMS OF
09:27AM 25 -- THAT'S WHAT NOTICE PROVIDERS SHOOT FOR IN TERMS OF WHEN

09:27AM 1 THEY'RE CRAFTING A NOTICE PROGRAM, THEY SHOOT FOR A REACH OF
09:27AM 2 80 PERCENT. IT'S CALLED A REACH. IT'S SORT OF A TERM THAT IS
09:27AM 3 USED IN MEDIA AND ADVERTISING. THERE'S A COMPLICATED
09:27AM 4 CALCULATION THAT GOES INTO IT, BUT VERITA, WHICH IS THE NOTICE
09:27AM 5 PROVIDER, DID OPINE THAT THE NOTICE PROGRAM WOULD REACH
09:27AM 6 80 PERCENT OF THOSE CLASS MEMBERS.

09:27AM 7 THE COURT: OKAY.

09:27AM 8 MR. ZAPALA: BOTH THROUGH -- AGAIN, WE DON'T HAVE --
09:27AM 9 WE HAVE EMAIL AND MAILING ADDRESSES FOR SOME PORTION OF THE
09:27AM 10 CLASS, BUT IT'S NOT THE ENTIRE CLASS. WE ESTIMATE THE CLASS TO
09:27AM 11 BE LARGER THAN THAT. AND THAT'S WHERE THE MEDIA PROGRAM COMES
09:27AM 12 IN TO TRY TO REACH THOSE EXTRA CLASS MEMBERS.

09:27AM 13 THAT SAID, WE DO HAVE -- AGAIN, WE ESTIMATE THE CLASS TO
09:27AM 14 BE AROUND 4 MILLION. WE HAVE SOMETHING LIKE 2.5 MILLION
09:27AM 15 RECORDS GIVEN A LOT OF THESE PURCHASES OCCUR OVER AMAZON. SO
09:28AM 16 COMPARED TO MANY OF MY CASES, WE ACTUALLY HAVE A LOT OF CONTACT
09:28AM 17 INFORMATION, UNLIKE A LOT OF INDIRECT PURCHASER CASES.

09:28AM 18 IN TERMS OF YOUR QUESTION ABOUT HOW MUCH EACH CONSUMER
09:28AM 19 WILL TAKE, AGAIN, IT VERY MUCH DEPENDS ON THE CLAIMS RATE.
09:28AM 20 WE'RE GOING TO DO EVERYTHING WE CAN TO MAKE SURE THAT CLAIMS
09:28AM 21 RATE IS AS HIGH AS POSSIBLE. UNFORTUNATELY, INDIRECT PURCHASER
09:28AM 22 CASES ARE PLAGUED BY LOW CLAIMS RATES, AND ONE OF THE REASONS
09:28AM 23 IS THAT IT'S THE NATURE OF CLASS ACTIONS. SOME PEOPLE HAVE
09:28AM 24 LESS IN PURCHASERS, AND, THEREFORE, DON'T TAKE THE TIME TO SEND
09:28AM 25 IN THE CLAIM FORM. BUT AGAIN, WE'RE TRYING TO MAKE THAT

09:28AM 1 PROCESS AS EASY AS POSSIBLE.

09:28AM 2 IT'S DIFFICULT IN INDIRECT PURCHASERS CASES BECAUSE THE
09:28AM 3 DATA THAT YOU GET FROM THE DEFENDANT IS NOT IN PRIVACY WITH
09:28AM 4 YOUR CLIENTS. YOU HAVE TO GET IT FROM THIRD PARTIES, WHICH
09:28AM 5 WE'VE DONE.

09:28AM 6 ONE OF THE THINGS I'M DOING IN INDIRECT PURCHASER CASES
09:28AM 7 THAT I THINK IS REAL BENEFIT TO THE CLASS AND TO GET THE CLAIMS
09:28AM 8 UP IS WE'RE USING THAT INTERMEDIARY DATA THAT WE RECEIVE.
09:28AM 9 USUALLY IT'S NOT 100 PERCENT BECAUSE, YOU KNOW, WE MAY NOT HAVE
09:29AM 10 SUBPOENAED FROM ALL OF THE DISTRIBUTORS. THERE MAY BE CERTAIN
09:29AM 11 TIME PERIODS THAT DISTRIBUTORS DON'T HAVE THAT DATA FOR PART OF
09:29AM 12 YOUR CLASS PERIOD.

09:29AM 13 SO IT'S ALWAYS UNDER -- IT DOESN'T COVER THE ENTIRE CLASS,
09:29AM 14 BUT WHAT WE'VE ENDED UP DOING AND WHAT WE'RE DOING IN THIS CASE
09:29AM 15 IS WE'RE GOING TO FILL IN THE CLAIM FORMS WITH DATA THAT WE
09:29AM 16 HAVE. AND CLASS MEMBERS COULD SIGN THAT CLAIM FORM WITHOUT
09:29AM 17 DOING ALMOST ANYTHING ELSE, YOU KNOW, PROVIDING PURCHASE
09:29AM 18 RECORDS OR ANYTHING LIKE THAT.

09:29AM 19 WE THINK THAT'S A REAL BENEFIT. WE'VE NOTICED IN OUR
09:29AM 20 CASES WHERE WE'VE DONE THAT AND GET MUCH HIGHER CLAIMS RATE,
09:29AM 21 AND WE REDUCE THE BARRIERS FOR PEOPLE PARTICIPATING IN THE
09:29AM 22 SETTLEMENT. WE HAVE EVERY INTENTION OF DOING THAT HERE. IT'S
09:29AM 23 PART OF OUR PLAN.

09:29AM 24 IN TERMS OF THE DISTRIBUTION PLAN, IT IS PRO RATA. SO A
09:29AM 25 CLASS MEMBER'S SHARE OF THE SETTLEMENT WILL DEPEND ON, A, HOW

09:29AM 1 MANY PURCHASES THEY HAD IN TELESCOPES, ONE OR MORE; AND THEN
09:29AM 2 ALSO WHAT PERCENTAGE THOSE PURCHASES MAKE UP OF EVERYONE
09:29AM 3 CLAIMING. SO IT'S KIND OF DEPENDENT ON TWO THINGS: HOW MANY
09:29AM 4 PURCHASES THEY HAD AND THEN HOW MANY PEOPLE END UP CLAIMING.
09:30AM 5 AND THEN THEIR TAKE WOULD BE WHATEVER PERCENTAGE OF THEIR
09:30AM 6 PURCHASES.

09:30AM 7 THE COURT: SURE. SO DID I READ SOMETHING THAT SAID
09:30AM 8 THAT YOU ANTICIPATE 2 TO 3 PERCENT?

09:30AM 9 MR. ZAPALA: THAT'S -- I MEAN, THE STUDIES SUGGEST
09:30AM 10 THAT THAT IS WHAT CLAIMS RATES ARE IN SORT OF SIMILAR CASES, SO
09:30AM 11 WE SET THAT OUT.

09:30AM 12 WE HAVE EVERY INTENTION OF BEATING THAT. I THINK WE WILL.
09:30AM 13 I DO THINK RECENT CLAIMS RATES ARE DOING BETTER. WE HAVE MORE
09:30AM 14 ELECTRONIC MEANS NOW TO REACH CLASS MEMBERS. YOU KNOW, WE'RE
09:30AM 15 USING MORE INNOVATIVE TECHNIQUES TO REACH CLASS MEMBERS ASIDE
09:30AM 16 FROM JUST SNAIL MAIL, WHICH, FRANKLY, NOBODY READS ANYMORE AND
09:30AM 17 I THINK WAS A LOT OF THE WAYS MAYBE 20 YEARS AGO PEOPLE WERE
09:30AM 18 TRYING TO REACH CLASS MEMBERS, WHICH IS NOT VERY EFFECTIVE.

09:30AM 19 SO SOME OF THE STUDIES ARE BASED ON THAT REGIME AND THE
09:30AM 20 REGIME HAS VERY MUCH CHANGED.

09:30AM 21 IN ADDITION TO THAT, IN TERMS OF DISTRIBUTION, WE DO
09:30AM 22 INTEND ON DOING ELECTRONIC PAYMENTS WHERE WE CAN, AND, AGAIN,
09:30AM 23 WE FIND THAT THAT INCREASES THE CLAIMS RATE AS WELL.
09:30AM 24 SOMETIMES, BELIEVE IT OR NOT, WE SEND OUT CHECKS TO PEOPLE AND
09:31AM 25 THEY DON'T GET CASHED.

09:31AM 1 THE COURT: I DO BELIEVE IT. PEOPLE RECEIVE
09:31AM 2 SOMETHING, AND THEY DON'T KNOW WHAT A CHECK IS.

09:31AM 3 MR. ZAPALA: RIGHT.

09:31AM 4 THE COURT: SO IS THE CONSUMER TO RECEIVE THEN BASED
09:31AM 5 ON THE NUMBER OF RESPONSES, AND THERE'S A \$32 MILLION, YOU'RE
09:31AM 6 RESERVING AND ASKING THAT THE COURT RESERVE 33 PERCENT FOR
09:31AM 7 ATTORNEYS' FEES AND COSTS?

09:31AM 8 MR. ZAPALA: WE ARE. WE HAVEN'T -- NOW, THAT'S WHAT
09:31AM 9 WE INTEND ON PUTTING IN THE NOTICE, YOUR HONOR, AND THAT'S JUST
09:31AM 10 A CEILING. IT MAY BE THE CASE THAT WE COME IN AND ASK FOR LESS
09:31AM 11 THAN THAT. IT MAY BE THE CASE THAT WE COME IN AND ASK FOR THAT
09:31AM 12 AND YOU AWARD LESS THAN THAT.

09:31AM 13 BUT WE LIKE TO PUT IN THE HIGH END NUMBER IN THE NOTICE SO
09:31AM 14 THAT NOBODY COULD BE PREJUDICED, RIGHT? YOU CERTAINLY CAN'T
09:31AM 15 PUT IN 25 PERCENT AND THEN COME IN AND ASK FOR 33 PERCENT.

09:31AM 16 THE COURT: SURE.

09:31AM 17 MR. ZAPALA: SO WE PUT IN THE 33 AND A THIRD. WE
09:31AM 18 HAVEN'T LANDED ON THAT YET. IT IS CONSISTENT WITH WHAT OUR
09:31AM 19 LODESTAR IS IN THE CASE IN TERMS OF A LODESTAR CROSS-CHECK, BUT
09:31AM 20 OBVIOUSLY THAT WILL BE A FEE MOTION THAT WE'LL FILE WELL IN
09:31AM 21 ADVANCE OF THE OPT OUT AND OBJECTION DEADLINE, AND THEN THAT'S
09:32AM 22 SUBJECT TO YOUR HONOR'S DISCRETION AND NINTH CIRCUIT CASE LAW
09:32AM 23 AT FINAL APPROVAL.

09:32AM 24 THE COURT: OF COURSE. AND SO TELL ME WHAT THE --
09:32AM 25 I'M ASKING YOU TO DO THE MATH -- IF IT'S A 2 PERCENT OR A

09:32AM 1 3 PERCENT, CAN WE SAY A CONSUMER MIGHT RECEIVE?

09:32AM 2 MR. ZAPALA: OH, IN TERMS OF THE -- WHEW.

09:32AM 3 THE COURT: YOU NEED TO GET YOUR PHONE OUT.

09:32AM 4 MR. ZAPALA: YEAH, REALLY.

09:32AM 5 WELL, IF WE TOOK THE -- SO THERE'S 4 MILLION CLASS
09:32AM 6 MEMBERS, JUST APPROXIMATELY. NOW, AGAIN, THAT'S AN ESTIMATE.
09:32AM 7 IT COULD BE WRONG.

09:32AM 8 BUT, YOU KNOW, IF YOU TOOK 32 MILLION DIVIDED BY 4, YOU
09:32AM 9 COULD COME UP WITH A NET OF OR SORT OF A GROSS, THAT WOULD BE
09:32AM 10 THE INDIVIDUAL TAKE.

09:32AM 11 AGAIN, IF WE WENT AND IF WE TOOK FEES OF 10 MILLION, YOU'D
09:32AM 12 BE TALKING ABOUT A \$22 MILLION NET SETTLEMENT FUND, AND I'M NOT
09:32AM 13 SURE WHAT THAT COMES OUT TO.

09:32AM 14 THE COURT: MR. BORDEN IS CALCULATING IT FOR YOU
09:32AM 15 RIGHT NOW.

09:32AM 16 MR. ZAPALA: BUT, AGAIN, I MEAN, ROUGHLY, WE'RE
09:32AM 17 TALKING ABOUT A 5 PERCENT OVERCHARGE ON, YOU KNOW, THESE
09:32AM 18 PURCHASES AND THEN, OF COURSE, YOU'VE GOT FEES AND COSTS.

09:33AM 19 I THINK I PUT MY PHONE AWAY AND TURNED IT OFF.

09:33AM 20 THE COURT: I'M JUST -- I'M NOT GOING TO HOLD YOU TO
09:33AM 21 THIS FIGURE, BUT I THINK -- I'M JUST CURIOUS WHAT YOUR INITIAL
09:33AM 22 FIRST PASS THOUGHTS ARE.

09:33AM 23 MR. ZAPALA: YEAH. AND THAT WOULD BE WITH THE
09:33AM 24 ENTIRE CLASS PARTICIPATING, OBVIOUSLY.

09:33AM 25 THE COURT: SURE.

09:33AM 1 MR. ZAPALA: AND THAT'S NOT GOING TO HAPPEN.

09:33AM 2 THE COURT: NO, NO.

09:33AM 3 MR. ZAPALA: SO THE PRO RATA TAKE OBVIOUSLY GOES UP

09:33AM 4 FROM THERE.

09:33AM 5 THE COURT: RIGHT. BUT IF YOU'VE GOT -- IF YOU HAVE

09:33AM 6 3 PERCENT --

09:33AM 7 MR. BORDEN HAS DONE THE MATH, HAVE YOU, MR. BORDEN?

09:33AM 8 MR. BORDEN: I DIDN'T QUITE HEAR ALL OF IT.

09:33AM 9 MR. ZAPALA: I CAN DO IT, YOUR HONOR.

09:33AM 10 THE COURT: SURE. GO AHEAD.

09:33AM 11 (PAUSE IN PROCEEDINGS.)

09:33AM 12 THE COURT: YOUR PHONE IS SMOKING THERE, MR. ZAPALA.

09:33AM 13 MR. ZAPALA: I'M PUTTING IT TO THE TEST, YEAH.

09:34AM 14 (PAUSE IN PROCEEDINGS.)

09:34AM 15 MR. ZAPALA: I'LL JUST WALK THROUGH THE CALCULATION

09:34AM 16 THAT I DID, AND HOPEFULLY I DID MY MATH RIGHT AND MY HIGH

09:34AM 17 SCHOOL MATH TEACHERS COULD BE PROUD.

09:34AM 18 I TOOK A NET SETTLEMENT AMOUNT OF I WILL CALL IT

09:34AM 19 22 MILLION AND SAY 10 MILLION COME OUT FOR COSTS AND FEES, AND

09:34AM 20 THEN DIVIDED IT BY 120,000, WHICH IS 3 PERCENT OF 4 MILLION, I

09:34AM 21 BELIEVE, AND THAT COMES OUT TO \$183.

09:34AM 22 THE COURT: OKAY.

09:34AM 23 MR. ZAPALA: SO THAT WOULD BE THE PRO RATA TAKE IF

09:34AM 24 THOSE METRICS HOLD UP.

09:34AM 25 THE COURT: SURE. SURE. AND FLUCTUATING FROM THAT

09:34AM 1 IT COULD GO UP, IT COULD GO DOWN.

09:34AM 2 MR. ZAPALA: IF MORE PEOPLE PARTICIPATE, OBVIOUSLY
09:34AM 3 THAT NUMBER WOULD GO DOWN.

09:34AM 4 THE COURT: AND IT'S NOT DEPENDENT ON THE MODEL OF
09:35AM 5 TELESCOPE THAT THEY PURCHASED, IS IT? IF SOMEONE PURCHASED A
09:35AM 6 HIGHER END TELESCOPE --

09:35AM 7 MR. ZAPALA: WELL, IT IS IN SO FAR AS THE
09:35AM 8 5 PERCENT -- THE PERCENTAGE IS APPLIED TO A HIGHER NUMBER, SO
09:35AM 9 THE OVERCHARGE -- SO, FOR EXAMPLE, YOU KNOW A 5 PERCENT
09:35AM 10 OVERCHARGE ON A \$100 TELESCOPE WOULD BE \$5, AND A 5 PERCENT
09:35AM 11 OVERCHARGE ON A TELESCOPE THAT IS \$1,000 IS MORE THAN THAT.

09:35AM 12 SO IT IS SOMEWHAT DEPENDENT BECAUSE SOMEONE WHO HAD \$1,000
09:35AM 13 PURCHASE HAS A HIGHER PERCENTAGE OF THE PURCHASE TOTAL THAN THE
09:35AM 14 \$100 PERSON IF THAT MAKES SENSE.

09:35AM 15 THE COURT: SO THAT'S ANOTHER METRIC THAT HAS TO BE
09:35AM 16 MET.

09:35AM 17 MR. ZAPALA: BECAUSE IT'S PRO RATA.

09:35AM 18 THE COURT: SO THE \$183 SOUNDS LIKE A GREAT NUMBER,
09:35AM 19 BUT SOMEONE WHO BOUGHT AN ENTRY LEVEL TELESCOPE FOR \$150 IS
09:35AM 20 UNLIKELY TO GET THAT.

09:35AM 21 IS THAT FAIR?

09:35AM 22 MR. ZAPALA: I THINK THAT'S FAIR. AGAIN, I MEAN,
09:35AM 23 THE INDIVIDUAL CLAIMANT WILL TAKE WHATEVER THEIR CORRESPONDING
09:36AM 24 PERCENTAGE IS OF THE DENOMINATOR. SO TO THE EXTENT THAT THEIR
09:36AM 25 PURCHASE MADE UP 1 PERCENT OF THE CLAIMING PURCHASES, THEY

09:36AM 1 WOULD GET 1 PERCENT OF THE NET SETTLEMENT FUND.

09:36AM 2 THE COURT: OKAY.

09:36AM 3 MR. ZAPALA: THAT'S THE NATURE OF A PRO RATA
09:36AM 4 DISTRIBUTION.

09:36AM 5 THE COURT: SURE.

09:36AM 6 MR. ZAPALA: AND I WILL SAY, AND I THINK WE SET
09:36AM 7 FORTH IN OUR PAPERS, BUT THAT'S THE STANDARD DISTRIBUTION
09:36AM 8 SCHEME IN AN ANTITRUST CASE. AND I HAVE DONE LOTS OF THEM IN
09:36AM 9 MY CAREER, AND I CAN'T THINK OF A SINGLE DISTRIBUTION MECHANISM
09:36AM 10 WHERE WE HAVE NOT DONE IT IN THIS MANNER.

09:36AM 11 THE COURT: SURE. AND LET'S TALK ABOUT THE NOTICE
09:36AM 12 THEN.

09:36AM 13 MR. ZAPALA: SURE.

09:36AM 14 THE COURT: IN THE CASES THAT YOU'VE DONE, DO YOU
09:36AM 15 EVER NOTIFY THE CONSUMERS ABOUT WHAT PRO RATA MEANS TO THE
09:36AM 16 DETAIL THAT WE JUST DID?

09:36AM 17 MR. ZAPALA: IT'S SET FORTH IN THE LONG FORM NOTICE,
09:36AM 18 AND I HAVE NEVER -- IT'S ALWAYS BEEN SET FORTH, FRANKLY, IN THE
09:36AM 19 MANNER THAT WE SET IT FORTH IN THIS NOTICE.

09:36AM 20 THE COURT: RIGHT.

09:36AM 21 MR. ZAPALA: IF YOU WOULD LIKE US TO DESCRIBE IT
09:36AM 22 MORE, WE CAN CERTAINLY DO THAT.

09:36AM 23 THE COURT: THIS IS A WORK IN PROGRESS, "THIS" BEING
09:37AM 24 NOTICE TO THE CLASS. AS YOU SAY, SOCIAL MAILS CHANGE. AND DO
09:37AM 25 PEOPLE READ SNAIL MAIL ANYMORE? I HOPE THEY DO. WE WANT TO

09:37AM 1 KEEP THE POST OFFICE GOING. THAT'S IMPORTANT.

09:37AM 2 BUT PEOPLE SHIFT TO ELECTRONIC COMMUNICATIONS, AND THEN WE
09:37AM 3 HAVE TO SHIFT OUR MESSAGING TO THEM BECAUSE WE KNOW PEOPLE
09:37AM 4 SPEND, WHAT, 1.2 SECONDS ON AN EMAIL LOOKING AT THE HEADER, AND
09:37AM 5 IT'S EASIER TO HIT DELETE THAN IT IS TO OPEN IT AND READ IT, SO
09:37AM 6 WE WANT TO CAPTURE AS MANY --

09:37AM 7 MR. ZAPALA: RIGHT. AND THAT'S WHY I REALLY THINK
09:37AM 8 THE MULTI LAYERED APPROACH IS THE BEST WAY TO GO. BECAUSE IF
09:37AM 9 YOU JUST GO SNAIL MAIL, AND YOU'RE GIVING THEM ONE CHANCE, AND
09:37AM 10 IF YOU GO SNAIL MAIL AND MEDIA, YOU'RE INCREASING THE
09:37AM 11 LIKELIHOOD THAT YOU'LL CATCH THEIR ATTENTION.

09:37AM 12 THE COURT: SURE. OKAY. SO LET'S -- LET ME --
09:37AM 13 LET'S SEE. I DID HAVE SOME QUESTIONS ABOUT -- LET'S GO TO THE
09:37AM 14 CLAIM FORM FIRST.

09:37AM 15 MR. ZAPALA: SURE.

09:37AM 16 THE COURT: THAT'S EXHIBIT E I THINK.

09:37AM 17 MR. ZAPALA: YES.

09:37AM 18 THE COURT: AND ON THE CLAIM FORM, I THINK IT'S
09:38AM 19 PAGE 1 IS WHAT I'M LOOKING AT, ON THE BOTTOM IT SAYS -- AND
09:38AM 20 THERE'S CLAIM FORM, CLASS MEMBER INFORMATION. THIS IS WHAT THE
09:38AM 21 CONSUMER WOULD FILL OUT --

09:38AM 22 MR. ZAPALA: CORRECT.

09:38AM 23 THE COURT: -- INITIALLY. AND THIS IS GOING TO BE
09:38AM 24 DONE EITHER ON AN EMAIL FORM OR RETURN BY A SNAIL MAIL?

09:38AM 25 MR. ZAPALA: YES, THIS CAN BE DONE -- SO THIS WILL

09:38AM 1 BE DOWNLOADED FROM THE WEBSITE SO CONSUMERS WILL GET A NOTICE.

09:38AM 2 IF THEY'RE GETTING A MAILED NOTICE, THEY WILL GET THE

09:38AM 3 CLAIM FORM. IF THEY'RE GETTING AN EMAILED NOTICE BECAUSE WE

09:38AM 4 DON'T HAVE A RESIDENTIAL ADDRESS --

09:38AM 5 THE COURT: RIGHT.

09:38AM 6 MR. ZAPALA: -- THEY CAN USE THAT NOTICE TO GO ON

09:38AM 7 THE WEBSITE AND DOWNLOAD THE CLAIM FORM AND DO IT

09:38AM 8 ELECTRONICALLY.

09:38AM 9 THE COURT: OKAY. GREAT.

09:38AM 10 MR. ZAPALA: AND THAT'S AVAILABLE TO ANYONE,

09:38AM 11 INCLUDING PEOPLE WHO ONLY RECEIVE THE NOTICE BY MAIL. ANYONE

09:38AM 12 CAN SUBMIT ELECTRONICALLY OR REQUEST A PAPER COPY.

09:38AM 13 THE COURT: OKAY. SO ON THIS FORM I LOOKED BELOW

09:38AM 14 THE CLASS MEMBER INFORMATION, THIS IS THE INITIAL FORM THAT

09:38AM 15 THEY SAY, YES, I'D LIKE TO BE PART OF THIS CLASS OR THE CLAIM

09:38AM 16 FORM THEY HAVE TO FILL OUT.

09:39AM 17 THE LANGUAGE BELOW IN ITALICS SAYS, "FAILURE TO ADD YOUR

09:39AM 18 UNIQUE CLAIM I.D." AND IF I'M A CONSUMER, I LOOK AT THIS AND I

09:39AM 19 THINK, OH, DEAR, WHERE IS MY UNIQUE CLAIM I.D.?

09:39AM 20 MR. ZAPALA: THAT'S ON THE NOTICE ITSELF.

09:39AM 21 THE COURT: OKAY.

09:39AM 22 MR. ZAPALA: SO WHEN THEY RECEIVE NOTICE OF THE

09:39AM 23 SETTLEMENT, EACH NOTICE WILL HAVE A UNIQUE IDENTIFIER ON IT,

09:39AM 24 AND THEY JUST NEED TO INCLUDE THAT IN THE CLAIM FORM.

09:39AM 25 THE COURT: OKAY.

09:39AM 1 MR. ZAPALA: AND AGAIN, THAT LANGUAGE SOUNDS HARSH
09:39AM 2 IN A WAY, BUT THEY CAN CONTACT THE CLAIMS ADMINISTRATOR TO GET
09:39AM 3 THAT IF THEY LOSE IT. IT'S NOT ALL IS LOST. WE DO EVENTUALLY
09:39AM 4 NEED TO GET IT. AND THE CLAIMS ADMINISTRATOR --

09:39AM 5 THE COURT: HERE'S MY SUGGESTION, SHOULD WE --
09:39AM 6 "FAILURE TO ADD YOUR UNIQUE CLAIM I.D.," AND THEN IN
09:39AM 7 PARENTHESIS, "FOUND ON YOUR NOTICE," OR SOMETHING LIKE THAT?

09:39AM 8 MR. ZAPALA: SURE.

09:39AM 9 THE COURT: OR "SEE NOTICE," SOMETHING LIKE THAT.

09:39AM 10 AND THEN FLIPPING TO PAGE 2, PAYMENT SELECTION.

09:40AM 11 MR. ZAPALA: YES.

09:40AM 12 THE COURT: AND, YOU KNOW, OF COURSE -- PARDON ME.

09:40AM 13 AND I LOOK AT THAT AND I THINK DOES THAT MEAN I HAVE TO PAY OR
09:40AM 14 DOES THAT MEAN HOW I'M GOING TO RECEIVE?

09:40AM 15 SO SHOULD WE SAY, "HOW WOULD YOU LIKE TO RECEIVE YOUR
09:40AM 16 PAYMENT," OR SOMETHING LIKE THAT?

09:40AM 17 MR. ZAPALA: ABSOLUTELY.

09:40AM 18 THE COURT: AND THEN THEY UNDERSTAND, I THINK.

09:40AM 19 PARDON ME FOR -- YOU KNOW, I DON'T MEAN TO SAY I'M DUMBING THIS
09:40AM 20 DOWN, BUT I WANTED TO MAKE IT ACCESSIBLE FOR EVERYBODY.

09:40AM 21 MR. ZAPALA: YOUR HONOR, NOT AT ALL. I THINK THIS
09:40AM 22 IS A VERY USEFUL EXERCISE. CLAIMS ADMINISTRATORS AND CLASS
09:40AM 23 COUNSEL GET INTO THESE RHYTHMS AND CERTAIN WAYS THAT THEY DO
09:40AM 24 THINGS, AND IT'S USEFUL TO HAVE THAT DISRUPTED IN A LOT OF
09:40AM 25 WAYS.

09:40AM 1 THE COURT: I JUST HAD A PASSING QUESTION ABOUT THIS
09:40AM 2 AS WELL. THIS INFORMATION THAT IS OBTAINED HERE, IS THIS
09:40AM 3 CONFIDENTIAL, THE PAYPAL, THE ZELLE, AND THE VENMO, ALL OF
09:41AM 4 THOSE NUMBERS AND ALL OF THAT, IS THAT CONFIDENTIAL TO --

09:41AM 5 MR. ZAPALA: WELL, WE HAVE EVERY INTENTION OF
09:41AM 6 KEEPING IT CONFIDENTIAL. WHETHER IT'S CONSIDERED CONFIDENTIAL
09:41AM 7 IN SOME LIKE MACRO SENSE, I DON'T KNOW. IT'S JUST AN ACCOUNT
09:41AM 8 NUMBER.

09:41AM 9 THE COURT: YES.

09:41AM 10 MR. ZAPALA: BUT OUR CLAIMS ADMINISTRATOR HAS
09:41AM 11 EXTENSIVE CONFIDENTIALITY PROTECTIONS AS ANY ENTITY DOES
09:41AM 12 NOWADAYS THAT HAS TO PROTECT DATA.

09:41AM 13 SO THIS ISN'T GOING TO BE SHARED -- THIS IS NOT SHARED
09:41AM 14 WITH ANYONE OTHER THAN THE CLAIMS ADMINISTRATOR AND THE CLASS
09:41AM 15 MEMBER, UNLESS THE CLASS MEMBER DISCLOSES IT TO SOMEBODY ELSE.

09:41AM 16 THE COURT: SHOULD YOU TELL THEM THAT OR IS THAT
09:41AM 17 NECESSARY?

09:41AM 18 MR. ZAPALA: SURE. WE CAN PUT SOMETHING IN THERE
09:41AM 19 THAT SAYS, YOU KNOW, THE CLAIMS ADMINISTRATOR WILL KEEP THIS
09:41AM 20 INFORMATION CONFIDENTIAL.

09:41AM 21 THE COURT: SOMETHING LIKE THAT. OF COURSE THAT
09:41AM 22 CREATES -- I'LL SEE IN ABOUT ANOTHER YEAR AND A HALF -- SOME
09:41AM 23 BREACH OF LAWSUITS FROM THE CLAIMS ADMINISTRATOR, RIGHT?

09:41AM 24 MR. ZAPALA: WHICH JUST HAPPENED, BELIEVE IT OR NOT.
09:41AM 25 WE HAD A DATA BREACH. NOT OUR CLAIMS ADMINISTRATOR,

09:41AM 1 THANKFULLY, BUT A CLAIMS ADMINISTRATOR HAS HAD A DATA BREACH.

09:42AM 2 THE COURT: RIGHT. OKAY. THAT WAS A QUESTION THAT
09:42AM 3 I HAVE.

09:42AM 4 MR. ZAPALA: SURE. I'VE NOTED IT, AND WE'LL MAKE
09:42AM 5 THAT CHANGE, YOUR HONOR.

09:42AM 6 THE COURT: LET'S SEE. THE OTHER QUESTION I HAD, DO
09:42AM 7 WE NEED TO DO ANY LANGUAGE ISSUES IN ANY OF THESE FORMS OR
09:42AM 8 NOTICES?

09:42AM 9 MR. ZAPALA: THE NOTICES ARE PROVIDED -- WE DON'T
09:42AM 10 SEND THEM OUT IN THE FIRST LANGUAGE, BUT THEY ARE AVAILABLE ON
09:42AM 11 THE WEBSITE IN DIFFERENT LANGUAGES. AND WE INTEND TO DO THAT
09:42AM 12 IN SPANISH -- AND I THINK JUST SPANISH.

09:42AM 13 THE COURT: OKAY. LET'S SEE. THE EMAIL NOTICE IS
09:42AM 14 IN EXHIBIT B, I BELIEVE, IT'S 391-2B.

09:42AM 15 MR. ZAPALA: I THINK EXHIBIT B AT LEAST I THINK IS
09:42AM 16 THE POSTCARD NOTICE, BUT THEY'RE FUNCTIONALLY VERY SIMILAR.

09:42AM 17 THE COURT: YES, THEY ARE THE SAME, RIGHT.

09:42AM 18 MR. ZAPALA: AND EXHIBIT A IS THE EMAIL NOTICE.

09:42AM 19 THE COURT: GOT IT. YES. THANK YOU.

09:42AM 20 I'M LOOKING AT EXHIBIT A, THE EMAIL NOTICE, AND THERE'S A
09:43AM 21 LOT OF LANGUAGE THERE.

09:43AM 22 MR. ZAPALA: UH-HUH.

09:43AM 23 THE COURT: HOW DO WE KEEP SOMEONE'S ATTENTION?

09:43AM 24 MR. ZAPALA: NUMBER ONE, I WILL SAY THAT VERITA HAS
09:43AM 25 OPINED IN THEIR DECLARATION THAT THIS DOES COMPLY WITH THE

09:43AM 1 PLAIN LANGUAGE REQUIREMENT.

09:43AM 2 THE COURT: YES.

09:43AM 3 MR. ZAPALA: IT'S A BALANCING ACT, RIGHT?

09:43AM 4 ON THE ONE HAND RULE 23 REQUIRES THAT YOU DISCLOSE CERTAIN
09:43AM 5 INFORMATION TO CLASS MEMBERS, ON THE OTHER YOU WANT TO KEEP IT
09:43AM 6 SIMPLE AND READABLE. THIS IS THE BEST BALANCE THAT WE HAVE
09:43AM 7 COME UP WITH IN TERMS OF INFORMING THE CLASS MEMBERS OF THE
09:43AM 8 INFORMATION THAT THEY NEED TO KNOW ABOUT THE SETTLEMENT, AND
09:43AM 9 THAT'S REQUIRED BY RULE 23, FRANKLY.

09:43AM 10 IT'S ALWAYS A BALANCE, AND WE'RE HAPPY TO TAKE
09:43AM 11 SUGGESTIONS. BUT I THINK I WILL SAY IN TERMS OF MY EXPERIENCE,
09:43AM 12 THIS IS VERY SIMILAR IN NATURE TO THE SHORT FORM NOTICES THAT
09:43AM 13 ARE OFTEN APPROVED BY DISTRICT COURTS.

09:43AM 14 THE COURT: AND I GUESS WHAT REALLY POPULATES THIS
09:43AM 15 NOTICE IS THE PARTIES, DOESN'T IT?

09:43AM 16 MR. ZAPALA: EXACTLY, YEAH. I SUSPECT THAT CLASS
09:44AM 17 MEMBERS WILL GLOSS OVER THAT INFORMATION TO SOME DEGREE, RIGHT?
09:44AM 18 I DON'T KNOW THAT THEY'LL READ SYNTA CANADA INTERNATIONALLY
09:44AM 19 SUPER CLOSELY, BUT I THINK THEY'LL GET A SENSE OF WHO THE
09:44AM 20 PARTIES ARE.

09:44AM 21 ONE OF THE THINGS THAT ALSO TAKES UP A LOT OF SPACE IS THE
09:44AM 22 LISTING OF THE INDIRECT PURCHASER STATES, WHICH IS IMPORTANT
09:44AM 23 OBVIOUSLY FOR CLASS MEMBERS TO KNOW BECAUSE IF THEY KNOW, FOR
09:44AM 24 EXAMPLE, WELL, GEE, I ACTUALLY BOUGHT MY TELESCOPE IN TEXAS,
09:44AM 25 RIGHT, I SOMEHOW GOT THIS NOTICE. THAT'S IMPORTANT FOR THEM TO

09:44AM 1 KNOW BECAUSE THEY WOULD KNOW ACTUALLY, A, THEY'RE NOT PART OF
09:44AM 2 THE CLASS ACTUALLY, BUT, B, THEY WOULDN'T BE ENTITLED TO
09:44AM 3 PARTICIPATE IN THE SETTLEMENT.

09:44AM 4 SO AGAIN, IT KIND OF MAKES IT LONGER, BUT IT'S NECESSARY
09:44AM 5 INFORMATION FOR CLASS MEMBERS.

09:44AM 6 THE COURT: MAY I SUGGEST UNDER THE "WHO IS
09:44AM 7 INCLUDED," AND THEN THAT FIRST SENTENCE, MAYBE -- COULD WE BOLD
09:44AM 8 THAT?

09:44AM 9 MR. ZAPALA: YES. SURE.

09:44AM 10 THE COURT: "RECORDS COLLECTED DURING THE LITIGATION
09:44AM 11 INDICATE THAT YOU MIGHT BE COVERED BY THE SETTLEMENT."

09:44AM 12 MR. ZAPALA: UH-HUH. BOLD THAT LANGUAGE?

09:45AM 13 THE COURT: YES, I THINK SO. THAT WOULD CAPTURE
09:45AM 14 SOMEONE'S ATTENTION, I THINK.

09:45AM 15 AND THESE NOTICES ARE TRYING TO -- PARDON ME, THAT'S THE
09:45AM 16 HOOK TO GET SOMEBODY TO COMPLETE THE APPLICATION.

09:45AM 17 WHAT DOES THE SETTLEMENT PROVIDE? IF AGREED TO, CREATE
09:45AM 18 32 MILLION SETTLEMENT FUND TO PROVIDE CASH PAYMENTS TO CLASS
09:45AM 19 MEMBERS WHO SUBMIT A VALID CLAIM FORM.

09:45AM 20 MAYBE -- CAN WE PUT -- YOU TELL ME, TOO -- "YOU HAVE BEEN
09:45AM 21 IDENTIFIED AS A POTENTIAL," IN BOLD OR SOMETHING?

09:45AM 22 MR. ZAPALA: IN THE FIRST PARAGRAPH?

09:45AM 23 THE COURT: WELL, SHOULD WE PUT THAT IN, "WHAT DOES
09:45AM 24 THE SETTLEMENT PROVIDE?" CATEGORY ALSO.

09:45AM 25 MR. ZAPALA: YOU WANT TO PUT THAT UNDER "WHO IS

09:45AM 1 INCLUDED?"

09:45AM 2 THE COURT: "WHAT THE SETTLEMENT PROVIDES."

09:46AM 3 MR. ZAPALA: GOT IT.

09:46AM 4 THE COURT: MY SENSE IS THAT IF YOU ATTACH THE
09:46AM 5 POSSIBILITY THAT THEY ARE A PLAINTIFF, A VALID CLAIMANT NEXT TO
09:46AM 6 THE \$32 MILLION, THAT PROBABLY GETS SOME ATTENTION.

09:46AM 7 MR. ZAPALA: GOT IT. WE'LL MAKE THAT CHANGE,
09:46AM 8 YOUR HONOR. THANK YOU.

09:46AM 9 THE COURT: JUST OWING TO HUMAN NATURE.

09:46AM 10 MR. ZAPALA: YEAH.

09:46AM 11 THE COURT: THOSE WERE REALLY THE ONLY SUGGESTIONS
09:46AM 12 THAT I HAD.

09:46AM 13 THE OPT-OUT TIME PERIOD AND THE TIME TO OBJECT.

09:46AM 14 MR. ZAPALA: YES, THAT'S SET FORTH IN OUR MOTION ON
09:46AM 15 PAGE 24 WHICH WOULD BE CUED OFF OF 104 DAYS. I KNOW IT SOUNDS
09:46AM 16 LIKE A STRANGE NUMBER, BUT 104 DAYS FROM THE PRELIMINARY
09:46AM 17 APPROVAL ORDER, WHICH IS REALLY ROUGHLY TWO MONTHS FROM WHEN
09:46AM 18 THIS GOES OUT. WE WANT TO HAVE ENOUGH TIME THAT NOTICE GOES
09:46AM 19 OUT. YOU KNOW, YOU'LL WANT AN OBJECTION EXCLUSION DEADLINE TO
09:47AM 20 WHEN NOTICE WENT OUT BECAUSE IT DOESN'T GIVE PEOPLE ENOUGH TIME
09:47AM 21 TO CONSIDER WHEN THEIR OPTIONS ARE. SO NOTICE GOES OUT AND
09:47AM 22 THERE'S A TWO-MONTH PERIOD, A LITTLE OVER A TWO-MONTH PERIOD
09:47AM 23 FOR PEOPLE TO CONSIDER THE SETTLEMENT, CONSIDER WHETHER THEY
09:47AM 24 WANT TO REMAIN PART OF THE SETTLEMENT, AND CONSIDER WHETHER
09:47AM 25 THEY WANT TO OBJECT OR OPT OUT.

09:47AM 1 OBVIOUSLY IN THE INTERIM, THE MOTION FOR ATTORNEYS' FEES
09:47AM 2 WILL BE FILED BEFORE THAT SO THEY CAN SEE THAT AS WELL AND
09:47AM 3 DETERMINE WHETHER THEY WANT TO OBJECT TO THAT.

09:47AM 4 THE COURT: OKAY.

09:47AM 5 MR. ZAPALA: CONSISTENT WITH THE PROCEDURAL GUIDANCE
09:47AM 6 ON CLASS ACTION SETTLEMENTS IN THE NORTHERN DISTRICT.

09:47AM 7 THE COURT: GREAT. WELL, THOSE WERE THE ONLY
09:47AM 8 QUESTIONS THAT I HAD.

09:47AM 9 MR. FROST, ANYTHING YOU WOULD LIKE TO ADD, SIR?

09:47AM 10 MR. FROST: NO, YOUR HONOR, NOTHING FROM DEFENDANTS.

09:47AM 11 THE COURT: OKAY. THANK YOU. ANYTHING FURTHER,
09:47AM 12 MR. ZAPALA?

09:47AM 13 MR. ZAPALA: NO, YOUR HONOR. I'M HAPPY TO ANSWER
09:47AM 14 ANY QUESTIONS, BUT, AGAIN, I'M VERY PLEASED THAT WE CAN BRING
09:47AM 15 THIS LITIGATION TO A CLOSE AND TRY TO GET MONEY TO THE CLASS
09:47AM 16 MEMBERS.

09:47AM 17 THE COURT: GREAT. OKAY. WELL, THANK YOU. THANKS
09:48AM 18 FOR WALKING ME THROUGH THIS AND ANSWERING MY QUESTIONS.

09:48AM 19 I DO FIND THAT RULE 23 FACTORS HAVE BEEN MET HERE FOR
09:48AM 20 PRELIMINARY APPROVAL. THIS DOES APPEAR TO BE AN APPROPRIATE
09:48AM 21 SETTLEMENT. IT'S AN ARM'S LENGTH NEGOTIATION. AS COUNSEL
09:48AM 22 SAID, THERE WERE SUBSTANTIAL MOTION PRACTICE, DISCOVERY
09:48AM 23 PRACTICE IN FRONT OF THE MAGISTRATE JUDGE, AND THE SETTLEMENT
09:48AM 24 DID ARISE FROM CONSIDERABLE TIME SPENT WITH A MAGISTRATE JUDGE.
09:48AM 25 SO I WILL GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT.

09:48AM 1 WHAT DATE SHOULD WE SET THEN FOR FINAL?

09:48AM 2 MR. ZAPALA: IF I MAY SUGGEST, YOUR HONOR, BECAUSE
09:48AM 3 THE DATES ARE KEYED OFF OF YOUR PRELIMINARY APPROVAL ORDER, WE
09:48AM 4 COULD SUBMIT A NEW PROPOSED ORDER THAT FIXES THOSE DATES --

09:48AM 5 THE COURT: SURE.

09:48AM 6 MR. ZAPALA: -- ASSUMING THAT THE PRELIMINARY
09:48AM 7 APPROVAL ORDER IS ENTERED SORT OF THE SAME DAY, OR WHATEVER.
09:48AM 8 SO WE CAN DO THAT THROUGH YOUR WORK PORTAL, IF THAT'S EASIER
09:49AM 9 FOR YOU?

09:49AM 10 THE COURT: THAT'S FINE. IF YOU WANT TO SUBMIT
09:49AM 11 SOMETHING OR PREPARE A FORM AND SUBMIT IT, AND THEN WE'LL SIGN
09:49AM 12 IT, AND THEN THE DATES WILL BE FLOWING APPROPRIATELY.

09:49AM 13 MR. ZAPALA: WE'LL DO THAT. THANK YOU.

09:49AM 14 AND I THINK WE INCLUDED A PROPOSED ORDER, AND WHAT I'LL DO
09:49AM 15 IS TAKE THAT PROPOSED ORDER AND PUT THE FIXED DATES ON THERE
09:49AM 16 BASED ON TODAY'S DATE.

09:49AM 17 THE COURT: AND WE'LL CALENDAR IT ON A DATE THAT IS
09:49AM 18 APPROPRIATE FOR OUR CALENDARS AS WELL THAT IS AS CLOSE AS
09:49AM 19 POSSIBLE TO THE TARGET DATE.

09:49AM 20 MR. ZAPALA: RIGHT. I THINK WE HAD SET FORTH, AND
09:49AM 21 I'M NOT SURE WHAT THAT WOULD BE, BUT 154 DAYS FROM TODAY WOULD
09:49AM 22 BE THE FINAL APPROVAL HEARING.

09:49AM 23 SO I'M NOT SURE WHAT THAT IS, AND I DON'T KNOW IF THAT'S
09:49AM 24 CONVENIENT FOR THE COURT, BUT WE'LL PUT THAT IN THE PROPOSED
09:49AM 25 ORDER.

09:49AM 1 THE COURT: THAT'S GREAT.

09:49AM 2 MR. ZAPALA, I JUST WANT TO THANK YOU AND YOUR TEAM, AND,
09:49AM 3 MR. FROST, YOU AND YOUR TEAM FOR REACHING THIS SETTLEMENT.

09:49AM 4 JUST, MR. ZAPALA, IF YOU COULD OFFER YOUR ASSISTANCE IN
09:49AM 5 SETTLING ANY OTHER TELESCOPE CASES, WE WOULD BE GRATEFUL.

09:49AM 6 MR. ZAPALA: YOUR HONOR, I WOULD BE MORE THAN HAPPY
09:49AM 7 TO DO THAT ONCE WE REACH FINAL APPROVAL, I CAN TURN MYSELF INTO
09:50AM 8 A MEDIATOR AND DO WHATEVER YOU NEED. I'D BE HAPPY TO WORK FOR
09:50AM 9 FREE ON THAT.

09:50AM 10 THE COURT: I DON'T KNOW. IN THE UNIVERSE OF
09:50AM 11 TELESCOPE CASES AND LITIGATION THERE MIGHT BE SOME OTHER STRAY
09:50AM 12 COMMENT FLOATING OUT THERE THAT COULD BENEFIT FROM SOME
09:50AM 13 SUBSTANTIAL GRAVITY.

09:50AM 14 MR. ZAPALA: I'M READY AND WILLING AND READY TO ROLL
09:50AM 15 UP MY SLEEVES, YOUR HONOR.

09:50AM 16 THE COURT: GREAT. THANK YOU. SEE YOU SOON. THANK
09:50AM 17 YOU.

09:50AM 18 (COURT CONCLUDED AT 9:50 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: NOVEMBER 1, 2024